

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

JEFFERY BATTLE,

Plaintiff

v.

MICROSOFT CORPORATION,

Defendant

Case No. 1:23-cv-01822-LKG

**DECLARATION OF SUZANNE FOGARTY IN SUPPORT OF DEFENDANT’S
MOTION TO COMPEL ARBITRATION AND DISMISS OR STAY**

I, Suzanne Fogarty, hereby declare as follows:

1. I am a Senior Product Manager, Identity and Network Access, at Microsoft Ireland Research (“Microsoft”). I have worked at Microsoft since 1998. My current role is Compliance Product Manager for Microsoft Account (consumer) for Identity and Network Access (IDNA). In my role, I am familiar with the system and process through which Microsoft users sign into their Microsoft accounts and accept the Microsoft Services Agreement. I make this declaration based on my personal knowledge and experience, discussions with appropriate personnel, and Microsoft’s records kept in the ordinary course of business. Except where otherwise stated, I have personal knowledge of the following facts. I am competent to give this declaration and could testify as to the facts stated herein if called upon to do so.

2. The Microsoft Services Agreement (“MSA”) governs use of Microsoft online consumer products and services, including Microsoft 365, Skype, Bing, MSN, Xbox, Microsoft

account, OneDrive, and many other services. The MSA is updated approximately every 12-18 months on average.

3. Records kept in the ordinary course of Microsoft's business show that the plaintiff in this case, Mr. Battle, has a Microsoft account associated with a Hotmail email address (jefbttl@hotmail.com). Records show that Mr. Battle first created his account in December 2003, and the account remains in active use, with a most recent sign-in on June 6, 2024. In order to create his account, Mr. Battle had to agree to the then-operative terms of use. Over the past several years, Mr. Battle has repeatedly agreed to updates to the MSA containing an arbitration agreement that covers any dispute concerning the services listed in the agreement, including Bing. The MSA contains a conspicuous notice in bolded, capitalized letters on the first page alerting customers to the arbitration agreement and identifying where customers may find the arbitration provisions. In order to continue using Microsoft services during this period, Mr. Battle had to accept and agree to be bound by each version of the MSA.

4. I understand that Mr. Battle's claims relate to the time period beginning in or around May 2023 and continuing into November 2023. The MSA in effect in May 2023 was the August 15, 2022 MSA. Similar to prior versions of the MSA, the August 2022 MSA contained an arbitration agreement stating that it covers any dispute with the user concerning the services listed in the agreement, including Bing. The next, and most recent, MSA became effective September 2023, and contains a materially identical arbitration agreement. Attached hereto as **Exhibits A and B** are true and correct copies of the August 2022 and September 2023 versions of the MSA respectively.

5. As it does for each new MSA, when Microsoft updated its MSA in August 2022 and September 2023, it notified users via both email and "interrupt notices." The email notices,


sent to all Microsoft account holders as of the notification date, notified users of the new terms of service going into effect (with a link to the new version of the MSA and to FAQs) and explicitly stated that “If you continue to use our products and services on or after [the effective date], you are agreeing to the updated Microsoft Services Agreement.” The notice emails for the August 2022 update were sent between June 15, 2022 and July 22, 2022, and the notice emails for the September 2023 update were sent between August 2, 2023 and September 15, 2023. As a Microsoft account holder and an active Microsoft user during these time periods, Mr. Battle would have received copies of both email notices. Attached hereto as **Exhibits C and D** are true and correct copies of the email notices sent to customers for the August 2022 and September 2023 MSA updates, respectively. In order to keep using his Microsoft services during all relevant times, Mr. Battle necessarily had to agree to these versions of the MSA.

6. Microsoft also alerts account holders of changes to the MSA via interrupt notice. An interrupt notice is a notification that pops up on the user’s screen stating that Microsoft has updated its MSA and provides a link to the full text of the MSA, labeled “Learn More.” The interrupt notice for the August 2022 MSA update was active from August 18, 2022 through October 3, 2022. The interrupt notice for the September 2023 update was active from October 4, 2023 through January 31, 2024. Records show that Mr. Battle’s Microsoft account remains active, including through regular use of his email in a web browser, and that he most recently signed in to his account on June 6, 2024 at 15:07:42 p.m. UTC. Attached as **Exhibit E** is a true and correct copy of the interrupt notice displayed to users in 2022 and 2023 (it was identical in both years). For each of these updates, Mr. Battle had to click “Next” on the interrupt notice during the relevant timeframe in order to continue accessing his account under the new versions of the MSA.

7. Most recently, Mr. Battle clicked to accept the latest version of the MSA on October 12, 2023 at 12:43:26 p.m. UTC. That version of the MSA, like the prior version, requires that all “disputes,” which is defined “as broad as it can be” to include “any claim or controversy between you and us concerning the Services” (including Bing), must go to “binding individual arbitration before the American Arbitration Association (“AAA”), under the Federal Arbitration Act.”

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed in Dublin, Ireland on June 7, 2024.



SUZANNE FOGARTY